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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,669	07/15/2003	Perry David Lidster	P112 0035	5900

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/618,669

Applicant(s)

LIDSTER ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Powrie et al (US 2001/0053404), in view of Blake et al (4,368,211).

Powrie et al disclose a formulation and process for producing a universal base for use in preparing non-settling, creamy, smooth, thick-fruit beverages containing for a fruit mash with predominately intact single fruit cells from fruit. Claim 1 differs from the reference in requiring a portion of the mash to be homogenized. Powrie et al disclose a process that includes washing, sanitizing, cutting, steaming, macerating, screening, and comminuting apple, which falls within the claim range. However Blake et al disclose a composition for aerated frozen desserts containing uncooked fruit puree and method of preparation comprising of a homogenizing pressure ranging from about 1,000 to 8,000 psig, which falls within claim range (col.4, lines 1-4). The reference teaches a similar process as claimed above. Therefore it would have been obvious to one of ordinary skill in the art to follow the process of producing a universal fruit base found in the reference of Powrie et al.

Claim 2 requires the washed and sanitized apple pieces are steamed at a temperature between 100°C and 110°C, to gelatinize the protoplasts, to inactivate the

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enzymes, and to solubilize the protopectin in the middle lamellae to water-dispersible pectin. Powrie et al disclose a formulation and process for producing a universal fruit base, which also requires the washed and sanitized apple pieces to be steamed at a temperature between 100°C and 110°C (Page 2, [0027]). Therefore it would have been obvious to one of ordinary skill in the art to use the particular range of temperatures as found in the reference.

Claim 3 further requires the use of a finisher/pulper. Powrie et al discloses a Fitz Patrick comminutor and a finisher (fig.1). Therefore it would have been obvious to comminute and finish the apple mince as shown by Powrie et al.

Claim 4 further requires specific screens to produce an apple mash with intact single cells. Powrie discloses screen openings of 0.05 to 0.13 inches in the finisher/pulper and screen openings in the comminutor of 0.033 and 0.093 inches. Therefore it would have been obvious to use specific screen size openings as claimed.

Claim 5 further requires homogenization pressure in amounts from about 1,000 and 5,000 psig. Blake et al disclose a composition for aerated frozen desserts comprising of pressures from about 1,000 and 8,000 psig, which falls within claim range (col.4, lines 1-4). Therefore it would have been obvious to use particular amounts of pressure within the range as disclosed by Blake et al.

Claim 6 requires a measured amount of apple mash weighing between 5% and 80%, which is added to the homogenized slurry to produce creaminess, viscosity increase, opacity, and apple stability. Powrie et al disclose the apple mash ranging in the amounts from about 35% to 75% by weight preferably 45% to 75% by weight. A

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puree can be added to the apple mash making a composition. Purees can be homogenized as disclosed by Blake et al (col.3, lines 15-29). Therefore it would have been obvious to use particular amounts of the apple mash as taught in the reference above (page 3, para. 2[0029]) and to combine the mash with a puree as disclosed by Powrie et al.

Claims 7 and 8 further requires gum stabilizer why can be pectin and gum. Powrie et al disclose the use of starch and xanthan gum as in claim 7. Pectin is well known to use with foods especially as the fruit often contains pectin. Therefore it would have been obvious to use a known stabilizer such as pectin in place of the stabilizers of Powrie et al unexpected results using pectin.

Claim 9 requires ascorbic acid be added to the apple base to increase the vitamin C content and to keep polyphenolic compounds in a reduced state. Powrie et al disclose a formulation and process for producing a universal fruit base and uses appreciable amounts of ascorbic acid added to the apple base. Therefore it would have been obvious to add ascorbic acid as taught by Powrie et al.

The limitations of claim 10 have been disclosed above and are obvious for those reasons.

Claim 11 teaches that the finisher/pulper has a screen opening of 0.05 to 0.13 inches (1.5 to 3.5 mm). Powrie et al disclose screen opening in the finisher/pulper can be between about 0.05 and 0.13 inches, which consists of the same range or amounts (page 3, para. 1[0028]). Therefore it would have been obvious to one of ordinary skill in the art to use the size of screen opening as disclosed by Powrie et al to make a mince.

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Claim 12 further requires the comminutor to have screen openings between about 0.033 and 0.093 inches (0.85 and 2.36 mm). Powrie et al disclose the same concept, in which the comminutor has screen openings between about 0.033 and 0.093. Therefore it would have been obvious to refer to amounts as listed in the reference above.

Claim 13 further requires a homogenization pressure between 2,000 to 3,500 psig. As Blake et al disclose the claimed range from 1,000 to 8,000 psig, it would have been within the skill of the ordinary worker to chose particular amounts of pressure absent a shown of unexpected results using the claimed pressures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Hp 7-15-05

  
HELEN PRATT  
PRIMARY EXAMINER